

UNITED STATES DEPARTMENT OF AGRICULTURE

**IN RE: PUBLIC HEARING
SOLID WOOD PACKING MATERIALS/IPPC STANDARDS**

Hearing held on the 27th day of June, 2003 at 8:30 a.m.
1400 Independence Avenue SW
Wing 4, Jefferson Auditorium
Washington, DC

TRANSCRIPT OF PROCEEDINGS

BEFORE: Richard Kelly

MEMBERS OF THE BOARD:

Ray Nosbaum
Chris Klocek

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PROCEEDINGS

June 27, 2003

MR. KELLY: Good morning everyone and welcome to beautiful, tropical Washington. I also want to welcome everyone to the Animal and Plant Health Inspection Service's public hearing on our Proposed Rule that would amend our wood import regulations to adopt an international standard. That standard, entitled "Guidelines for Regulating Wood Packaging Materials in International Trade" was approved by the interim commission on phytosanitary measures of the International Plant Protection Convention, the IPPC, on March 15, 2002. The international standard, the IPPC standard, calls for wood packaging material to be either heat treated or fumigated with methyl bromide and marked with an approved international mark certifying treatment. We propose to adopt the IPPC guidelines because they represent the current international standard determined to be necessary and effective for controlling pests in wood

packaging material used in global trade. We also propose to adopt the standard because current United States' requirements for wood packaging material pests are not fully effective.

My name is Richard Kelly and I'm a regulatory analyst for USDA APHIS. I will be presiding officer for today's hearing. The hearing today is the third of three public hearings we've held on this matter. The first two were held this past Monday in Seattle, Washington, and Wednesday in Long Beach, California.

All of the hearings were announced in the Proposed Rule, which was published in the Federal Register on May 20, 2003. I should mention that if you need a copy of either the Proposed Rule or of the IPPC guidelines, both are available at the registration table you passed on the way in. And we will be referring to both documents during the course of the hearing or our opening remarks, so you might want to pick up a copy if you don't have one with you.

So the purpose of today's public hearing is to give interested persons the opportunity to comment, to present their data, views, or arguments concerning the May 20 Proposed Rule. Also, those people speaking today will have the opportunity to ask questions of us about the Proposed Rule. The APHIS people here will try to respond to clarify the provisions of the Proposed Rule if there are terms that you're not clear on the meaning of or if there are concepts that don't seem welldefined. We'll be happy to try to clarify those issues. However, we mainly view this hearing as an opportunity for us to receive public comments from you and not as an opportunity to debate the merits of the rule on the spot here. So at this hearing any interested party may appear and may be heard in person or through an attorney or other representative. We will hear people this morning in the order in which you've registered as speakers. Some of you registered weeks ago by email or by phone. Some of you just signed in as speakers this morning. If you did neither of those things, but you still want to speak don't worry. At the end of the scheduled speakers we will open the floor up for comments from anyone in the audience who wants to speak.

The Federal Register notice stated that today's hearing is scheduled to conclude at 5:00 p.m. and if we had a bigger crowd I might have to limit the time for remarks from any one person, but based on the numbers here today I'm sure that we won't have to do that.

All comments that are made here today are being recorded and will be transcribed. A court reporter over here is taping and making a transcription of the proceedings today and we will make that transcript available as soon as APHIS gets it back. You can either get a hard copy of it by contacting us or the transcript will be on our website within two to three weeks. Our website by the way there are a couple of web addresses listed in the Proposed Rule. If you follow any of them you will eventually get to all of the relevant materials about solid wood packing materials. You can also contact the phone number listed in the addresses section of the Proposed Rule if you need further information. And finally there will be a copy of the transcript in our APHIS reading room, which is down in the first wing of this building and which is open every day from 8:00 to 4:30. Along with this transcript that room has copies of all of the written comments we receive on our proposed rules and supporting materials on proposed rules.

So shortly we will take the first speaker, but before that we're going to have an opening statement by Ray Nosbaum of APHIS, who is next to me at the table here.

A little bit more on procedure first. If you do make a statement today and you have it prepared beforehand and have a written copy of it, we'd appreciate it if you would leave one or preferably two copies of that with us. That way the court reporter can compare spellings and things like that and make sure that they're correct in the transcript. Also, when you come up to speak, we're going to ask you to make your remarks from one of the two microphones on the floor there, both so that you can be heard and because that gives an audio feed to the court reporter. And when you make your statement if you would please start off by giving us your name and spelling your last names, particularly if it's difficult, so that we get your name down accurately in the transcript.

I would remind everyone we know we're here for a hearing today on our Proposed Rule, so we're asking you to keep your topics relevant to the Proposed Rule since that's what we're soliciting comment on today.

So the close of the comment period is July 21, 2003. We will accept comments by -- well, the means identified in the Proposed Rule, primarily postal mail or email, up until July 21 and all the comments we receive along with the transcripts of the hearings will be considered as APHIS develops its Final Rule on this subject.

Now getting back to Ray Nosbaum, whom I mentioned a little bit earlier, Ray for several years has been the program manager for this Proposed Rule and for APHIS' solid wood packing materials project. Mr. Nosbaum is going to provide an overview of the provisions of the Proposed Rule and its relationship to other solid wood packing materials activities going on in APHIS. And after his presentation he will be available to answer questions if any -- should you have questions regarding the meaning of the rule or how to clarify it. Let me clear that up a little - actually, We prefer it if you wait until you come up to speak and at the end of any statement you make then we will be happy to field any questions that you have about the meaning of the rule.

Sitting next to Mr. Nosbaum at the table is Mr. Chris Klocek, an APHIS economist, who developed the economic analysis that was cited in the Proposed Rule in its section on "Executive Order 12866 and the Regulatory Flexibility Act." And if you have any questions, particularly regarding the economic analysis in the rule, Mr. Klocek may be able to respond to them.

Also here today is Ms. Linda Toran, who is running the registration table out front and who made all of the logistical arrangements for this three-city series of public hearings.

That about wraps up what I have to say and after a short presentation made by Ray Nosbaum, I will call the first speaker from our list of speakers. Thank you. Ray?

MR. NOSBAUM: Good morning everyone and thank you for coming. As many of you already know you can find the regulations on logs, lumber, and unmanufactured wood in 7 Code of Federal Regulations 319.40. The Proposed Rule, which you should have a copy of and if you don't please grab one because I will be referring to it as well as the IPPC standard. You'll find access to related documents to the Proposed Rule if you go to page 27488 in the first column -- I'm sorry -- the third column. You will find the reference to our website, which is in the second

paragraph at the end. And you can find questions and answers addressed there, you can get access to the Proposed Rule, to the economic analysis, and also to regulations by other countries. Additionally, the environmental -- draft environmental assessment prepared related to the rule is available, but its website is not listed in the Proposed Rule. So in case you don't have that website let me read that off to you now. And that is www.aphis.usda.gov/ppd/es/ppq/swpmdeis.pdf.

Okay. My goal today is to give a quick review of the regulatory history related to solid wood packing material, a short description of the International Plant Protection Convention standard requirements, reasons APHIS believes adopting the international standard makes sense, and feedback on a few frequently asked questions about the rule.

First, let's do a quick review of the rule making related to solid wood packing material by APHIS.

Rule making began in 1990 and resulted in a final rule in 1995. The requirements of this rule for solid wood packing material, except for Canada and the northern states of Mexico, are that solid wood packing material must be debarked and if not debarked, then it must be heat treated, fumigated, or chemically preserved. In all cases an importer's document is required to certify that solid wood packing material is either free of bark or properly treated.

In 1996 and 1998, the Asian longhorned beetle, a wood borer, was discovered in New York and Chicago metropolitan areas. The Asian longhorned beetle is believed to have arrived on solid wood packing material from China. In November of 1998 we published in the Federal Register an interim rule requiring China and Hong Kong to heat treat at 71 degrees Celsius maintaining a core temperature for 75 minutes or fumigation with methyl bromide using the schedule in the PPQ treatment manual or chemically preserving the solid wood packing material. Additionally, China and Hong Kong must provide a phytosanitary certificate showing that the treatments were properly done.

In 1998, rule making began to remove the northern states of Mexico from the exemption to debark or treat solid wood packing material as required in the 1995 final rule. A risk assessment completed by the US Forest Service identified the northern states of Mexico as a source of wood that had -- for logs, lumber, and solid wood packing material that are a pathway for quarantined pests. APHIS is completing a final rule requiring the northern states of Mexico to meet the regulatory requirements for the rest of the world.

In 1998, APHIS published an advance notice of proposed rule making requesting public comment on possible alternatives for a proposed rule on importing solid wood packing material from anywhere in the world. In August 2000 we published a draft baseline risk assessment for public comment. The draft baseline risk assessment gives the risk of introduction of exotic pests from solid wood packing material without treatment. These pests fall into five categories: bark beetles, defoliators, sap suckers, wood borers, and wood pathogens.

In March of 2002 an international standard entitled "Guidelines for Regulating Wood Packaging Material in International Trade" was approved. APHIS proposes to adopt this international

standard into the regulations on logs, lumber, and unmanufactured wood. APHIS feels adopting the International Plant Protection Convention standard is good strategy in providing needed phytosanitary measures to protect forests and agriculture. From now on instead of saying International Plant Protection Convention I'm going to say IPPC. The treatments in the standard are effective in controlling bark beetles and wood borers, which are 95 percent of the pests that we intercept coming in on solid wood packing material. The requirements of the international standard are heat treatment at the core of 56 degrees Celsius for 30 minutes or fumigation with methyl bromide using the schedule in the IPPC standard and marking the solid wood packing material with the approved IPPC mark indicating proper treatment.

For a moment I would like to draw your attention to the IPPC standard and if you turn to page 12 you'll find the first annex. And in that annex are the requirements, as well as the list of targeted pests. And then on page 13 is the second annex and there is the new approved IPPC mark.

The required treatments target pests listed in the international standard and those scientific names there represent bark beetles, wood borers, termites, and the pinewood nematode. Bark beetles and wood borers represent over 95 percent of the exotic pests the US intercepted in 2000 and 2001 coming from solid wood packing material. The IPPC standard lists other potential treatments, which require more study. And they're on page 14, which is the third annex. As countries receive and provide verifiable published studies demonstrating the effectiveness of additional treatments, they may be added as required treatments to the international standard for solid wood packing material. APHIS expects to participate in and monitor this process. If this process provides adequate phytosanitary protection for the United States, APHIS may use the IPPC process for amending the international standard on solid wood packing material instead of pursuing separate rule making.

Why does APHIS believe it is important to adopt the IPPC standard? Among other reasons I would like to highlight the interceptions of pests, research on treatment effectiveness, and international trade requirements for equivalency and harmony.

I have already mentioned interceptions and would additionally refer you to the charts in the Proposed Rule on pages 27484 and 85. In particular, you can see on page 85 a comparison of the increase of interceptions for the rest of the world as opposed to the interceptions from China after adopting the interim rule in 1998. The bottom line represents China and the top line represents the rest of the world. In 2000 and 2001, exotic bark beetles were found in New York and Pennsylvania, as well as Halifax, Nova Scotia, and Canada, which is a source of trade by rail. In July of 2002, the emerald ash borer was identified in five counties of Michigan, as well as Windsor, Ontario, in Canada, which is across from Detroit, Michigan. The emerald ash borer is suspected on arriving on dunnage, which is a form of solid wood packing material, at least three years ago, maybe five years ago. The emerald ash borer was also reported and confirmed in northwestern Ohio. Also in July of 2002, in Indiana inspectors found live and dead adult wood boring moths in wooden containers from Spain. And then finally earlier this year there were findings of an Asian bark beetle in Colorado and Utah. And in all cases solid wood packing material is suspected to be the pathway of the entry of these exotic pests.

APHIS believes the effectiveness of the required IPPC treatments is supported by research.

Besides the research cited in the preamble of the Proposed Rule, research used by the IPPC working group that wrote the standard can be found on the APHIS website. And you can find on page 27488 some citations of that research and then again on page 27482 at the bottom of the first column is the location of the research used by the working group that drafted the international standard. The IPPC is beginning collaboration with international organizations in documenting effectiveness of current required treatments on additional pests and additional treatments on all pests. The US is involved in these efforts.

Adopting the IPPC standard would replace the requirements we have placed on China and Hong Kong. This helps the US meet international trade goals of equivalency because our regulations will apply similarly around the world. The Sanitary and Phytosanitary Agreement requires members of the World Trade Organization to treat trading partners similarly and the US is a member of the World Trade Organization. Adopting the IPPC standard helps the US achieve harmonized phytosanitary measures with its major trading partners, who are all signers of the IPPC and also are expected to adopt the IPPC standard.

As contact for questions on the Proposed Rule published in the Federal Register on May 20 of this year, I received calls asking me to clarify information. These calls are not public comments and my responses are not official responses to comments. Here are answers to a few of the most frequently asked questions.

First, will the United States implement this rule in January 2004? The source of this date is a decision memo signed in April of this year by the heads of the National Plant Protection Organizations of Canada, the United States, and Mexico. APHIS, Plant Protection and Quarantine, is the National Plant Protection Organization for the US. The decision sheet states that it is the goal of all three countries to coordinate implementing the IPPC standard in all of North America by that date, but achieving this date is dependent on completion of rule making in all three countries.

Second, when will the rule go into effect? Given current information, APHIS will phase in full enforcement of the regulations. We already notified the World Trade Organization of our intent to adopt the IPPC standard. US embassy agricultural trade liaisons were cabled so they can inform the National Plant Protection Organization and exporters of other countries of the expected requirements to move solid wood packing material into the United States. Our current thinking is that for awhile after the publication of the Final Rule, some paper certification of treatments will be allowed. Non-compliant solid wood packing material would be stopped and treated at the importer's cost. We expect to track frequent non-compliant sources and share information with Canada and Mexico. Inspectors would especially target non-compliers. It is anticipated that at full enforcement non-compliant solid wood packing material would be rejected and civil penalties may be applied for fraudulent use of the approved IPPC mark.

Third, will APHIS encourage use of substitute materials in its rule making? Synthetic and processed wood materials used to make packing materials are not regulated by APHIS because we believe their manufacturer already provides adequate protection against invasive species. Our regulations on wood are designed to make those packing materials made of solid wood adequately protected from pests. APHIS believes this provides a range of safe packing materials.

Businesses would make the choice for the best material based on phytosanitary, environmental, and economic considerations.

Fourth, what is the status of the IPPC approved mark? The original mark in the March 2002 approved standard has been replaced. The standard is no longer suspended while the Food and Agricultural Organization of the UN trademarked a replacement. You can see the new mark in the copies of the standard distributed to you, which I pointed out to you and here is just for your information an enlargement of what it looks like.

Fifth, what about the US exports involving solid wood packing material to other countries? When other countries adopt the IPPC standard by their own rule making, US exporters will be required to meet the requirements of those trading partners. The US rule is an import rule and does not impose requirements on US companies exporting to other countries. In other words, the rule imposes requirements on countries importing to the United States. APHIS PPQ, as the National Plant Protection Organization for the US, has memorandums of understanding with two organizations to help US exporters meet the requirements of other countries adopting the IPPC standard in the treatments required for solid wood packing material and applying the approved IPPC mark. The American Lumber Standards Committee should be contacted on procedures for heat treatment. Their website is www.alsc.org and you can call them at (301) 972-1700. The National Wood Pallet and Container Association should be contacted for procedures on fumigation with methyl bromide. Their website is www.palletcentral.com or you can call them at (703) 519-6104. In order to use the approved IPPC mark, a US exporter must follow these organizations' procedures.

Thank you for your attendance and listening to my presentation.

MR. KELLY: Thank you, Ray. I think we'll be moving from the podium mic to the table mics at this point since any one of us may need to respond to questions. There's also one or two brief remarks I'd like to make before I call the first speaker. These are just things that we've kind of learned as we went on the road with these hearings, things that came up in comments in either Seattle or Long Beach and some of you may have the same questions, so let me just mention what they were in case you're thinking along the same lines.

Several people at the earlier hearings had what I think of as operational questions. If the rule went into effect as we proposed it, they asked things like the procedures we'd follow at particular ports or the level of inspection or activity we would have at particular ports or how particular commodities might be handled at particular ports and things like that. The real answer to that question is that we can't answer that question right now because as with any new APHIS program we're going to make our best estimate of what is needed and what are the proper procedures and levels of resources to implement the program at all of our ports. And then we will adjust that after the program is implemented and as we learn more about what the real array of problems are and what we need to adjust at particular ports. So on the other hand, while we may not be able to tell you much today about operational questions, Ray just inished giving the contact points for some of the issues who may be able to at least provide some what if guidance about projecting the future in terms of operational questions.

Several commenters at earlier hearings asked sort of specific questions about their own industry or their own type of packing materials or the commodities that they're shipping in them. And one or two of them suggested particular exemptions or redefinitions of terms in the rule that they thought would remove us from regulating a type of packing material that had no inherent risk. That -- we're certainly open to comments about that. My only suggestion to those earlier commenters was that if you have a particular commodity or situation you think we should address, don't just bring it up today, but write us as detailed as possible a written comment and suggest specifically what you think should be changed in either our definitions or restrictions so that in the final rule we can address your concept of the solution clearly.

And the last set of comments we got quite several of earlier were just sort of time line and effective date comments and Ray touched on that as well. I just -- I'm a regulatory writer myself, so I've always got a real focus on the APA, Administrative Procedure Act, and how long it takes to get stuff done under it. So I just remind you all that the comment period closes July 21 and after that we would have to assess the comments, develop the final rule, make changes if any are justified by the comments, write the thing, and then get it through several levels of review, and then get it published. And normally after a final rule is published it becomes effective 30 days later. So there's two points I'd like to make on that. One is that it's roughly compatible with the January 2004 goal that Ray mentioned that the three North American countries have signed onto as a goal. However, if the issues raised in the comment period get more complex or hard to deal with it could slide beyond that. The other thing is that effective date 30 days after the final rule is published is not engraved in stone. For good cause we can either make it effective in less than 30 days or more than 30 days or we could even stagger the implementation of a rule where part of it becomes effective on one date and another part becomes effective later. If any of you have ideas on this subject you're also welcome to address them either today or in written comments in terms of the implementation schedule for the rule.

Sorry for being so long-winded, but I just thought mentioning the earlier issues might help focus some thoughts.

Next we have four registered speakers. I will list them and then call the first one. And after these four folks have had a chance to speak we'll move on to anyone else who didn't get on this sign-up sheet, but is interested in speaking today. The four pre-registered speakers are Aimee Delach of the Defenders of Wildlife, second is Patricia Rinker. I have no organization listed. Third is Faith Campbell of the American Lands Alliance. And fourth is Bruce Scholnick of the National Wooden Pallet and Container Association. Again, I'd ask you to speak from one of the two floor microphones and give your name as the first part of your speech. And if you have any questions for us you're welcome to ask them at the end of your statement. So may I please call Aimee Delach.

MS. DELACH: Good morning. My name is Aimee Delach. The first name is spelled A-i-m-e-e, last name D-e-l-a-c-h. I'm here on behalf of Defenders of Wildlife. Defenders of Wildlife, on behalf of our 430,000 members and supporters nationwide, welcomes this opportunity to comment on APHIS' Proposed Rule regarding the importation of solid wood packing material.

Defenders is a bio-diversity conservation organization that recognizes invasive species as a huge

threat to the United States' forests and bio-diversity. While we applaud APHIS' efforts to decrease the risk of solid wood packing material introducing pests into the United States, we are concerned that the Proposed Rule fails to effectively accomplish this goal or to do so in the most environmentally sound manner. Specifically, we have two concerns about APHIS' intent to adopt the standard set by the IPPC. One, the level of protection provided by the Proposed Rule and two, the likely increase in the use of ozone depleting methyl bromide as a result of this rule.

With respect to the level of protection provided by the Proposed Rule, Defenders of Wildlife believes that APHIS should act in the manner that provides the maximum amount of protection for America's forests. In its Draft Environmental Impact Statement, APHIS states that Alternative 5, prohibition on solid wood packing material, would achieve the greatest possible reduction of risk from the introduction of pests and pathogens associated with solid wood packing material. "If no SWPM were imported there could not be any harmful organisms imported with it." That's a quote. "The alternative also would achieve the greatest reduction of adverse environmental consequences from the use of controlled methods, chemical and/or physical," also a quote from the DEIS.

On the other hand, the Draft EIS says of the fumigation and heat treatments mandated in the IPPC standard and the preferred alternative, "Each method has limitations as described in the environmental consequences section for the no action alternative. The primary issue relates to the penetration of the heat or fumigant to the site of the pest within the wood. Methyl bromide treatments do penetrate wood well, but may not eliminate all pest risks present." The Draft EIS also says, "Those pest organisms and disease vectors of wood not effectively treated by fumigation with methyl bromide or heat treatment would continue to pose potential risk of introduction and damage to trees in the United States. As with Alternative 2, some of the deep wood borers, fungi, rots, and wilts would continue to be problematic for abatement of pest risk under the IPPC guidelines." So question of treatment effectiveness is of particular concern when SWPM are not debarked. The IPPC standards do not require debarking and the Draft EIS minimizes this concern by indicating that underbark pests will be killed by the treatment.

However the more important issue, which is not sufficiently addressed by the Proposed Rule, is whether heat or fumigant treatments will be effective against deep wood pests when the wood remains barked.

Additionally, while we recognize that the IPPC standard of marking treated wood will substantially ease the inspection process, we are concerned that the reuse of solid wood packing material could result in infestations of wood that had been previously treated and marked. Marking may therefore provide a false sense of security that wood packing materials are not infested.

Defenders of Wildlife concludes from the evidence laid out by APHIS in its own Draft EIS that the preferred alternative, the subject of the Proposed Rule, adoption of the IPPC standard, will not provide sufficient protection from the numerous insect, fungi, and other pests that threaten our forests through solid wood packing material.

Our second major concern refers to methyl bromide use. Defenders of Wildlife is concerned that

the adoption of the IPPC standard with its reliance on methyl bromide fumigation as a treatment will violate the Montreal Protocol and substantially increase the United States' usage of ozone-depleting methyl bromide. The Draft EIS explicitly states of the preferred alternative, "Next to Alternative 2, this alternative will result in the greatest level of anticipated environmental consequences from component methods because it would one, require treatments of solid wood packing material from all countries and two, it would result in substantial use of methyl bromide and three, it would continue to increase the demand for forest products." Worldwide methyl bromide use in 2001 was about 49,000 metric tons. US adoption of the IPPC standards could raise annual methyl bromide use by between 5,000 and 10,000 metric tons, depending on the packing method. Such increased usage certainly violates the intent of the Montreal Protocol and may soon violate the letter of the treaty as well, as parties are moving towards restrictions on quarantine and preshipment uses of methyl bromide. While the Montreal Protocol includes exceptions for methyl bromide in cases of essential or critical use, all efforts must be made to find alternatives or at a minimum to minimize applications for essential uses. Application of the IPPC guidelines fails to promote alternatives, would result in increased use of methyl bromide, and would renege on a specific commitment made by the US and other countries to completely phase out methyl bromide.

In conclusion, the World Trade Organization gives members the option to impose a higher level of sanitary and phytosanitary protection than international standards provide. The United States is not obligated to use the standard least restrictive of trade if that standard poses risks of significant economic and ecological damage to the United States and furthermore could lead to the violation of another treaty, the Montreal Protocol. Defenders of Wildlife urges APHIS to adopt a higher standard of protection and one that allows the United States to maintain compliance with the Montreal Protocol by initiating a phase-out of solid wood packing material and a replacement with processed wood or plastic alternatives. Thank you.

MR. KELLY: Thank you very much for your comments. Our next speaker will be Patricia Rinker. Patricia Rinker pre-registered before this meeting. I'm not certain she's here today, so let me ask once more is Patricia Rinker in the audience and do you care to speak? Okay. Possibly she'll show up later this morning. And in that case we'll move on to our third registered speaker, Faith Campbell.

MS. CAMPBELL: Yes. Thank you. My name is Faith Campbell. That's F-a-i-t-h C-a-m-p-b-e-l-l and I'm representing American Lands Alliance. I've been at this almost as long as APHIS has, watching you since the early 90's and commenting numerous times on proposals dealing with wood packaging. And American Lands fully concurs that wood packaging pathway, the pathway of introduction, must be closed quickly. After all, it's almost exactly seven years since the ALB was detected in Brooklyn and as you indicated in -- Dr. Nosbaum indicated, there have been numerous other finds of insects probably introduced on wood packaging in the intervening years. However, we do not support APHIS' proposal because it is of uncertain effectiveness and it will result in damage to the stratospheric ozone layer. To correct these deficiencies and ensure protection of both US forests and the broader environment, APHIS should adopt a regulation that specifies a deadline by which all incoming packaging must be made from materials other than solid wood or boards. Only this strategy achieves all three national goals at stake in this rule making: accommodating rising trade volumes, protecting

forests from exotic pests, and protecting the stratospheric ozone layer.

24 hours ago I was in Chicago hearing from your colleagues and others about the heroic efforts they've made there and I'm now wearing, in addition to my plastic beetle, some nice ALB. This is a serious problem. It needs a serious solution. In Detroit area, what do they have, a 2000-square mile quarantine area? We're talking serious problems here. Nevertheless, APHIS has set such a lax efficacy target that our forests remain at high risk. While APHIS has noted numerous times that the US is particularly vulnerable to exotic forest pests, the agency's implied level of risk is too lax and allows entry of too many potential pests. We infer that APHIS is aiming for a risk equal to or slightly worse than that chosen for the 1998 regulation governing wood packaging material from China, i.e. 3-4 percent per year. In practice, allowing 3-4 percent of 3 million container-loads of wood packaging to harbor a single quarantined pest, despite having been treated, results in the entry of between 90,000 and 120,000 forest pests per year.

If APHIS considered protecting our forests, urban trees, horticultural industry, and other tree-associated industries to be sufficiently important, the agency would adopt the most protective measure, requiring the use of alternative materials. APHIS could do so by preparing a risk assessment that both documents the high risk to our forests and the superior efficacy of a strategy relying on packaging made from alternative materials. Under the WTO SPS agreement, such a risk assessment does not need to provide conclusive scientific evidence. Instead, the risk assessment must evaluate the likelihood, i.e. the probability of entry, establishment, or spread of potentially damaging invaders. The analysis does not have to be quantitative, nor must it prove that the damage would reach any specific threshold.

APHIS and the Forest Service have already published a draft risk assessment, to which Dr. Nosbaum alluded, that documents the extreme vulnerability of America's forests. By finalizing this analysis and adding an analysis of the superior efficacy of relying on packaging made from alternative materials, APHIS would meet the requirements of the WTO SPS agreement.

Nor, in my view, need APHIS complete the second risk assessment before promulgating a regulation that requires future use of alternative materials. As long as the risk assessment was completed before the requirement took effect, it should be acceptable under the WTO. In other words, the US could adopt now a strategy of requiring use of alternative materials by a certain future date if it considered preventing introduction of forest pests to be sufficiently important.

APHIS' proposed measures are not sufficiently effective. These proposed measures, especially methyl bromide fumigation, have not been proved effective against pathogens. While APHIS says that few pathogens are detected on wood packaging, the agency concedes in its DEIS and other publications that inspectors have great difficulty detecting pathogens, therefore it has not been proved that pathogens represent as minor a threat as APHIS now implies. Furthermore, the Draft EIS associated with this rule making states that some deep wood-borers also might not be killed by the proposed treatments. Our concerns about efficacy are heightened by the fact that the IPPC standard does not require debarking the wood before further treatment. Debarking is key to improving the already questionable ability of methyl bromide to penetrate the wood to kill deep wood pests.

APHIS' proposal will result in unacceptably prolonging depletion of the stratospheric ozone layer. Adoption of the proposal will increase global methyl bromide use, although by how much is uncertain. USDA estimates vary from a low of 5,145 metric tons to a high of 102,000 metric tons per year. The latter estimate represents a ten-fold increase above current world use for quarantine purposes and a tripling of total world use of methyl bromide for all purposes. In comments submitted on the DEIS, American Lands noted that APHIS as repeatedly failed to carry through on past promises to address the problems caused by its expanding reliance on methyl bromide. Furthermore, these alarming increases do not include methyl bromide use to fumigate wood packaging destined for US exports or trade among Europe, China, Japan, and other countries. So the actual increase in methyl bromide use will probably well exceed the tripling I just mentioned.

There are some additional considerations we would like to address. It is crucial that the US and Canada work together to curtail the disproportionate numbers of introductions of forest pests that are occurring in the Great Lakes region. They are far out of proportion to the volume of foreign shipping in that region or to the volume of interceptions by APHIS, now DHS, inspectors. It is equally important that APHIS quickly complete the separate rule making to close the loophole, which allows untreated wood packaging to enter the country from northern Mexican states.

Finally, we are pleased with certain aspects of the proposal. We applaud the requirement that foreign facilities mark treated SWPM with unique numbers, which would allow APHIS to trace that SWPM back to the producer if problems arise. We do however ask that the language in Section 319.40-3(b)(3) be strengthened to ensure that re-export of solid wood packing material that arrives without the required markings be the standard procedure. Thank you.

MR. KELLY: Thank you very much for your comments this morning. Our next registered speaker is Mr. Bruce Scholnick of National Wooden Pallet and Container Association

MR. SCHOLNICK: We'll email you our statement.

MR. KELLY: Thank you.

MR. SCHOLNICK: Good morning. I'm Bruce Scholnick. That's spelled S-c-h-o-l-n-i-c-k, president of the National Wooden Pallet and Container Association. NWPCA is the largest organization of wooden packaging professionals in the world. Our membership base is primarily in the United States, but we also have members in 29 other countries. I appreciate the opportunity on behalf of NWPCA members to comment on the final rule on the importation of solid wood packaging material.

At the outset I'd like to commend APHIS for supporting the international community to develop a single standard among the world's trading partners. Because of the coordination efforts of plant protection organizations like APHIS, the UN's Food and Agricultural Organization, and IPPC working groups, approximately 120 nations are in the process of implementing these harmonized standards. The coordination among a global community will create efficiencies in the movement of goods that have never before been realized. Likewise, it will facilitate understanding of the requirements.

The wooden pallet and container industry is one that ranges from small, family-owned pallet manufacturers and recyclers to national corporations, but we have many more of the former. As their customers have become increasingly more global in their distribution of products, these smaller and even mid-size pallet companies have difficulty in understanding and keeping up with the differences between shipping to China or New Zealand or Australia or Japan or the European Union.

One standard for all will lessen confusion, increase pest control, and create a smoother, more effective supply line. You are to be applauded for your contribution to this world coordination.

NWPCA does have concerns about some of the language in the draft of the final rule. I've already expressed to you the value of a single standard, which is why language that appears to be an escape clause is troubling. Let me read it to you. "The harmonized sanitary and phytosanitary measures on as wide a basis as possible, members shall base their sanitary or phytosanitary measures on international standards, guidelines, or recommendations where they exist, except when members opt to impose a higher level of sanitary or phytosanitary protection than the international standards provide." The minute you begin making exceptions you eliminate harmonization and effectively nullify the international treaty. I might have thought the exception language was a singular mistake, except that I found similar, even more alarming language further on in the rule. That language says, "As stated in the IPPC guidelines, APHIS or other nations' plant protection agencies may promulgate additional rules as needed to address additional pest risks on a case by case basis."

So now we have an international treaty binding nearly 120 nations, but we unilaterally annul the treaty the minute we start changing the standard on a case by case basis.

The members of NWPCA recognize APHIS' responsibility in protecting our forests and agriculture from harmful pests. We understand an unforeseen problem could arise and APHIS would have to address it, but we want to make sure that you recognize that any case by case changes open the door to retaliation by targeted countries. Such steps should be taken reluctantly and cautiously. Further, any changes should be based on sound technical evidence that change is necessary and scientific proof that the new rules will in fact address the problem better than the global standard.

On behalf of the members of NWPCA, I would also like to express our appreciation that some of the extremely difficult and disturbing language and the Environmental Impact Statement was not included in this Final Rule. That language, which was woven throughout the document, clearly stated that the agency's long-term goal should be to replace wood packing material with rubber, plastic, steel, or aluminum and eliminate wood packing material entirely. Such a goal, if reached, would not only destroy an industry, it would significantly increase costs to shippers. Those onerous costs would of course be passed on to consumers. More relevant in the context of an environmental statement is the fact that these replacements would be an environmental disaster. Metal pallets, which are currently in limited use for transporting goods by air, are extremely heavy and expensive and wouldn't probably be used in large quantity. Plastic pallets are approximately four times the cost of wooden pallets, but they are most likely to be used, so let's talk about their environmental potential impact.

Plastic, unlike wood, is not biodegradable. It's going to be with us forever, unless of course it burns up in a fire. The National Fire Protection Association announced last May that they were issuing new fire ratings for warehouse facilities that store loads on reinforced plastic pallets. The new standard requires a two-class upgrade for reinforced polyethylene and polypropylene plastic pallets over the standard that exists for wood pallets. Reinforced plastic pallets have a metal rod in the center of the plastic to keep them from bending. And the unreinforced pallets require a one-class upgrade from wood. Unreinforced plastic pallets melt easily and intend to inhibit flames, whereas the reinforced plastic pallets tend to hold their structure longer, allowing air gaps that fuel the fire and create more of an intense heat. Both, as evidence for the need for upgraded standards, are a bigger fire hazard than wood.

If the US were to change its requirements to favor non-biodegradable plastics like pallets, this country would wake up to an environmental nightmare. And there's currently a trade deficit in this country and we're a consumer nation and in the first two months of this year alone our trade deficit with just our top ten trading partners was \$59 million. That means more goods are coming into this country than are going out. Most of them are on pallets. And that's fine if they're on wooden pallets, which can be disassembled and recycled, if not as pallets than as landscape mulch or wood stove pellets. If they're plastic or metal, those pallets will begin to pile up in landfills across America.

You might be thinking that plastic and metal pallets are so much more costly than wood, a recovery and retrieval system will be in place. That's a reasonable assumption, but the largest pallet-leasing company in America has a seepage problem of more than 20 percent. That's some 75 million pallets. They're losing more than 20 percent of their pallets from their control in a closed rental system. No one has yet tried to track or recover a pallet in an international system and with a 20 percent loss ratio for domestic use, landfills can expect to realize exponential growth of non-biodegradable pallets.

Protecting our national forests through responsible pest management is a goal we share with your agency. Our industry has a major stake in ensuring the perpetuation of American forests and American shippers have a significant interest in ensuring widespread continued access to wood pallets and containers. The United States Department of Agriculture has in fact funded a research project on the economic impact of alternative phytosanitary technology. We applaud these efforts and support any research that encourages the development of improved phytosanitary technologies that better eliminate pests and protect the environment.

We're committed to encouraging programs that will renew our forests and protect their future. Before I conclude, I'd like to leave you with a few facts about the environmentally responsible nature of wood packing material. Wood pallets and containers are reusable and repairable and recyclable and made from a renewable resource. Wood pallets comprise 93 percent of the world's pallet market because they are rigid and durable and functional and safe and cost effective. Pallets use low-grade lumber that would likely be discarded if it were not for wood packaging usage. The waste produced in making pallets and the material from pallets no longer able to be repaired is turned into useful, marketable products such as playground mulch, animal bedding, and wood stove pellets. And if a pallet does end up in a landfill, it's biodegradable. Less than 3 percent of the nearly 7 million pallets manufactured and repaired ever end up in landfills. That's

according to a study by Virginia Tech and the US Forestry Service. In a 1999 study of pallet recovery, it was estimated that approximately 207 million pallets were recovered, repaired, and then sold or resold. Another 49 million pallets were unnailed and the wood was used in repairing or manufacturing new pallets. It is estimated that about 25 million pallets didn't require repair or were resold or used as is. Another 16 million pallets were ground up and chipped. About half of this went into mulch, of which about 7 million pallets were used to produce colored mulch, which is in high demand, and another 4.4 million went into uncolored mulch. About 5 million ground pallets were used as fuel. The study concluded that less than 3 percent of the total recovered pallets were sent to landfills or used for other purposes.

I think the environmental responsibility inherent in using wood pallets is well illustrated by NWPCA's 2003 Recognition Award winner, Basic American Foods, for their environmentally responsible use of wood pallets through the entire life cycle of the pallet. Challenger Pallet and Supply, a member of NWPCA, with Basic American Foods initiated a system in which Challenger delivers new pallets, retrieves the used ones, repairs them, and returns them to Basic American Foods for further use. If a pallet is no longer strong enough to use as pallets are turned into chips by Challenger, then returned to Basic American Foods and used as fuel in their dehydration process. From new pallet to repaired pallet to fuel chips, these wood products are used with maximum environmental efficiency.

The goal of the United States should be to both preserve the safety of our nation's natural resources and our commitment to the harmonized standards of the international community. The United Nation's Food and Agricultural Organization supports these standards because they believe it will keep the world's forests and croplands safe from harmful pests. The World Trade Organization supports these standards because they believe it will facilitate the free flow of global commerce or the happy marriage of goals of government and the interests of business. We should not divorce ourselves from this policy without serious reason because there will be grave consequences. There are voices advocating the permanent elimination of wood packing material. Those voices would have a stray from the cooperative resolution of nearly 120 nations and go our own way. Going our own way would generate a retaliatory action. There is a better way. We enforce the ISPM 15 standard and in the meantime seek viable alternative treatment methods for wood, not alternative uniglobe management systems. Reliance on wood pallets is an environmentally friendly option that should be continued. And when we can treat wood more effectively and cost efficiently, we'll readily do so.

Again, thank you for the opportunity to comment on the regulation that will affect so many of our wood pallet manufacturing members and also the American manufacturers they serve.

MR. KELLY: Thank you for your comments, Mr. Scholnick. Well, those were the pre-registered speakers we had this morning, unless Patricia Rinker has shown up. Would you please come to the microphone then? Thank you.

MS. RINKER: I was -- had no intention of speaking. I was merely registering for the hearings. I sent an email, but I don't think you got it in time.

MR. KELLY: I apologize. We must have put you on the wrong list.

MS. RINKER: Yes. I'm here though. Thank you.

MR. KELLY: Well, in that case let me invite anyone else in the audience who is interested in making comments or asking clarifying questions of us. If you'd raise your hand so I can see if there's anyone who would like to speak, then I will ask you to come to the microphone. Yes, sir. Please come on up. If you'd start with stating your name I'd appreciate it.

MR. DIXON: Good morning. I'm Dave Dixon, Package Research Laboratory and I just have a quick question. If, assuming that your January 2, 2004, implementation date holds up, will there -- is there any provision of a phase-in period or will you expect 100 percent compliance as of that date?

MR. KELLY: We did not propose any specific phase-in period in the Proposed Rule, so at the current time there is nothing on the table about that. We're happy to receive comments suggesting something specific.

In terms of -- sometimes there's a little confusion between implementation and enforcement. Even assuming that the rule is adopted as proposed and becomes effective 30 days after the final rule, it's implemented then, we would certainly have a strategy as to how to start off and step up enforcement of the provisions, understanding that some people will just not be informed as to the new requirements immediately. And frequently APHIS and other federal agencies will start enforcing a regulation without the full level of civil penalties and enforcement activities that will eventually be reached.

In other words, they're at the ports. There will be an acknowledgment that some people just haven't got the word and the first time that they are found in violation we might take a different action than we would take six months later for instance. None of this is -- can be spelled out with any great specificity because a great deal depends on what we find in the first weeks and months of implementing the program.

MR. DIXON: Okay. Thank you.

MR. KELLY: Ray, do you have any more comments on that issue?

MR. NOSBAUM: Not really.

MR. KELLY: Is there anyone else in the audience who'd like to either make a statement or ask a question? Well, I'll give you another minute or so to consider that while I do our wrapping up remarks. First of all, we want to say how much we appreciate everyone coming today. This is the only way that APHIS has outside of our own resources to improve what we're doing by getting intelligent feedback from those affected by and interested in the rule, so we do appreciate your taking time to develop your comments and submitting them to us. One last reminder that the comment period closes July 21, so if you have additional thoughts either on what was in the Proposed Rule or on other comments you've heard here today, please get them to us by July 21. And that's all I have, but Ray would like to make a couple of remarks.

MR. NOSBAUM: Richard said this in the beginning, but I would like to add as we encouraged at the other public hearings if you have specific ideas operationally about how to implement and enforce this rule, please submit those comments and try to be as specific as you can about your ideas. It is our intention in the preamble to the Final Rule to either address those ideas or if they seem reasonable to us to incorporate them into the rule. So we need your public input in order to be able to consider those ideas.

Again, I want to emphasize that we'll be monitoring as well as participating in any improvement to the standard and the standard may not be set in stone in its current shape. If there is scientific documentation to indicate that there are additional treatments or additional pests that can be addressed, then we would be glad to participate with the international community in improving the standard to address those issues. Thank you.

MR. KELLY: And I think one last call for any comments from the audience. I don't see any. That being the case, thanks once again for coming today. It's 10:10 in the morning and this hearing is adjourned.

[End of Proceedings]

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Washington, DC

DATE: June 27, 2003

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